WP(C) 2859/2007
BEFORE
HON'BLR MR JUSTICE AMITAVA ROY

W.P.(C) NO.2859/2007
PETITIONER :

Shri Syamal Kumar Bhumij,
Son of Shri Syamanta Bhumij,
R/o Khowang Tea Estate,
P.O. Khowang,
District Dibrugarh.

RESPONDENTS :

1. THE STATE OF ASSAM,
Represented by the Commissioner and Secretary , to the Govt.of Assam, Education Department, Dispur, Guwahati-6.

2. The Mission Director , Axom Sarba Siksha Abhijan Mission(SSA), Assam, Guwahati.

3. The Deputy Commissioner,
Dibrugarh.

4. The District Mission Co-ordinator, SSA, Dibrugarh.

5. The Headmaster, Pithubor ME School, Khowang, Dibrugarh.

W.P.(C) NO.2860/2007
PETITIONER :

Shri Bikash Jyoti Gogoi,
Son of Shri Cheni Ram Gogoi,R
R/o Gandhi Nagar,
P.O. Dibrugarh,
District Dibrugarh.

RESPONDENTS :

1. THE STATE OF ASSAM,
Represented by the Commissioner and Secretary , to the Govt.of Assam, Education Department, Dispur, Guwahati-6.

2. The Mission Director , Axom Sarba Siksha Abhijan Mission(SSA), Assam, Guwahati.

3. The Deputy Commissioner,
Dibrugarh.

4. The District Mission Co-ordinator, SSA, Dibrugarh.

5. The Headmistress, Rangoli Patha LP School, Dibrugarh. Naharkatia.

6. Headmaster, Samajkalyan ME school,
Dibrugarh, Naharkatia.

W.P.(C) NO.2865/2007

PETITIONER :

Shri Dulen Hazarika,
Son of Shri Jogeswar Hazarika,
Resident of Nirmali Gaon
(Milan Nagar),

P.O. C.R. Building,
District Dibrugarh.

BY ADVOCATES :
In all the cases
Mr N.Dutta,
Mr B. Chetri,
Mr K. Saxena.

RESPONDENTS :

1. THE STATE OF ASSAM,
Represented by the Commissioner and Secretary , to the Govt.of Assa m, Education Department, Dispur, Guwahati-6.

2. The Mission Director , Axom Sarba Siksha Abhijan Mission(SSA), Assam, Guwahati.

3. The Deputy Commissioner,
Dibrugarh.

4. The District Mission Co-ordinator, SSA, Dibrugarh.

5. The Headmaster, Chaulkhowa
M.E. School, Dibrugarh.

BY ADVOCATES :
In all the cases
Mr S.Sarma,
Ms B.Devi, SC, SSA.

Date of hearing : 31.07.2007

Date of Judgment : 02.08.2007.

JUDGEMENT AND ORDER(ORAL)

These proceedings under Article 226 of the Constitution of I ndia register an impugnment of the termination of the petitioners' services as J unior Engineer under the Assam Sarbasiksha Abhijan Mission and their consequenti al release therefrom. The basic facts are similar and the legal issues being t he same, the petitions were heard analogously and are therefore being disposed o f by this common judgment and order.

2. I have heard Mr N.Dutta, Senior Advocate assisted by Mr B. Chetri,

Advocate for the petitioners and Mr S.Sarma, learned Standing counsel, Assam Sarbasiksha Abhijan Mission (for short hereinafter referred to as 'SSA') .

3. A brief narration of the pleaded facts would be necessary. The petitioners, following a selection, recommendation of the District Level Selection Committee and the approval of SSA were appointed as Junior Engineers of various Blocks on contractual basis for a period of 11 months with effect from the date of execution of respective deeds of agreement to the said effect. For ready reference, the particulars of their appointment are extracted hereinbelow :-

Writ petition	Name	Designation	Block/office
2859/2007	Shyamal Kr Bhumij	J.E.	Khowang Block
2860/2007	Bikash Jyoti Gogoi	J.E.	SSA,Dibrugarh
2865/2007	Dulen Hazarika	J.E.	SSA, Dibrugarh

Each of the petitioners executed a written agreement on 3.10.2006 with the SSA and in terms thereof, the tenure of their contractual service was to automatically lapse on 2.9.2007.

4. Clause 6 of the agreement allowed either party thereto to terminate the agreement by giving one month's notice to the other party in writing or by paying one month's remuneration in advance ,in lieu of notice. Any dispute between the parties were agreed to be settled by the sole arbitrator to be appointed by SSA as stipulated in Clause 10.

5. After signing the deed of agreement, the petitioners assumed their office and started rendering services. While the matter rested at that, the Mission Director, SSA issued a notice dated 5.5.2007 requiring them to explain as to why their contractual engagement should not be reviewed and terminated as contemplated under Clause 6 of the agreement for gross negligence of duties and misappropriation of fund sanctioned for the works mentioned therein . The charges levelled vis a vis the petitioners in the above order are quoted hereinbelow:-

SHYMAL KR BHOMIJ-WP(C) 2859/07

1. That you had taken on demand Rs.7,500/-from Sri Shanti Ram Saikia, Head Master, Sihugarh Girls ME school in connection with construction of additional class room in the above school for the year 2006-07 as per the statement of the Head Master.

2. That on receipt of the alleged mis-appropriation of fund sanctioned for construction of additional classroom in various LP/ME Schools in Dibrugarh District an enquiry was made by the Deputy Commissioner, Dibrugarh and the above extortion of money from the Head Master was confessed by him in presence of the Deputy Commissioner in a meeting held on 27.04.2007.

BIKJASH JYOTI GOGOI-WP(C) 2860/07

1. That you had taken on demand Rs.30,000/- and Rs.1,500/- from Smt Rina Sonowal, Head Mistress of Rangolipatha LP school and Shri Deveshwar Sonowal, Head Master, Samajkalayan ME school respectively in connection with construction of additional classrooms in the above schools for the year 2006-07 as per the statements of the Head Mistress/Head master.

2. That on receipt of the alleged misappropriation of fund sanctioned for construction of additional class rooms in various LP/ME Schools in Dibrugah District an enquiry was made by the Deputy Commissioner, Dibrugarh and the above extortion of money from the Head Master/Head Mistress was confessed by them in presence of the Deputy Commissioner in a meeting held on 27.04.2007.

DULEN HAZARIKA-WP(C) 2865/07

That you had taken on demand Rs.5000/- from Sri Jyotindra Nath Sarma, Head Master, Chaukhowa ME School in connection with construction of additional classroom in the above school for the year 2006-07 as per the statement of the Head Mas

ter.
2. That on receipt of the alleged mis-appropriation of fund sanctioned for cons truction of additional classrooms in various LP/ME schools in Dibrugarh District , an enquiry was made by the Deputy Commissioner, Dibrugarh and the above extort ion of money from the Head Master was confessed by him in presence of the Deput y Commissioner in a meeting held on 27.04.2007.

The petitioners duly submitted their explanation wherein they denied the allega tions and asserted that the same had been levelled as a sequel to their strict s upervision of the construction works and consequential reproaches to the Headma sters/Head Mistresses of the concerned institutions for non conformity with the plans and estimates pertaining thereto. According to the petitioners, on enqui ries being made by them, the Headmasters/Headmistress of the concerned schools disclosed to them that the imputations had been made due to constant pressure on them by the authority concerned threatening termination of their services otherwise.

6. By the impugned orders dated 15.5.2007 passed by the Mission Direc tor, SSA the petitioners' services were terminated ostensibly under Clause 6 o f the terms and conditions of the agreement on one month's remuneration as sti pulated. The petitioners thereafter were released by order dated 18.5.2007 of t he District Mission Co-coordinator, SSA, Dibrugarh.

6. In their counter, the Assam Sarba Siksha Mission questioned the maintainability of the writ petition referring to the arbitration clause in the agreement. It also asserted that the petitioners' services were terminated hav ing found to be unsatisfactory in exercise of powers contained in clause 6 of t he agreement and the decision being final and binding on them, it was beyond any challenge in law. It is pleaded that the Mission Director,SSA , issued the s how cause notice to the petitioners on the basis of the complaints received fro m the Headmaster/Headmistress of the concerned institutions and the impugned de cision was taken after considering the charges levelled against them, the rep orts submitted by the Deputy Commissioner of the district and the explanations s ubmitted by the petitioners by offering one month's remuneration in advance. I t is disclosed in the counter that on 19.4.2007 a review cum sharing meeting on civil works had been convened in the office chamber of the District Mission C o-ordinator, SSA wherein the concerned Headmasters/Headmistress made statements endorsing the accusations made by them.

7. Mr Dutta has assiduously urged that the impugned decision on t he face of the records being punitive and stigmatic in nature precipitating adv erse civil consequences against the petitioners, it is unsustainable in law in a bsence of any opportunity to them to represent against the same. The learned Senior counsel maintained that the decision to terminate the petitioners' se rvices having been taken following a preliminary enquiry by the authorities ref erred to in the letter dated 27.4.2007 (Annexure-1 to the affidavit of SSA) and also acting on the disclosures made by the Headmasters/Headmistress of the in stitutions involved in writing alleging extortion of money from them by the peti tioners without either furnishing the materials collected against them or affor ding an opportunity to controvert the same, the termination of their services i s vitiated by gross transgression of principles of natural justice. The impugne d action being wholly founded on the allegations levelled against the petitione rs , the same on the face of it was punitive and in absence of any prior opport unity to the petitioners to meet the same, it is liable to be adjudged unconsti tutional ,null and void, he urged. Mr Dutta contended that fairness in adminis trative action being a constitutional guarantee against arbitrariness , the a rbitration clause in the agreement by no means could be interpreted to be exte rminative thereof. In support of his submissions, the learned Senior counsel placed reliance on the decisions of the Apex Court in (1984) 2 SCC 369, Anoop J aiswal, Appellants vs. Government of India and another, Respondents, Respondents .

8. Mr Sarma, as against this argued that the parties being governed wholly by the terms and conditions of the agreement, in the teeth of the arbitr

ation clause , the instant petition is not maintainable in law. Serious allegations having been levelled against the petitioners which stood substantiated following an enquiry and authenticated by the complainants, the impugned decision was passed, the petitioners' services having been found to be unsatisfactory. The termination of the petitioners' services being in accord with the agreement , the same cannot be faulted with. Moreover, the impugned order is not stigmatic, he urged. He pressed into service to buttress his arguments the decision of the Apex Court in (2006) 4 SCC 469,Abhijit Gupta,Appellant vs. S.N.B. National Centre, Basic Sciences and Others, Respondents, Respondents.

9 The rival submissions have been duly considered. Admittedly, the petitioners were inducted in a contractual service , the terms whereof as per the agreement between the parties would lapse on 2.9.2007, subject to the either party's volition of terminating the same by one month's notice or payment of one month's remuneration in advance, in lieu thereof. There is no wrangle at the Bar that the above recruitment is to a public office. Thus, the agreement, notwithstanding, the petitioners during their tenure as comprehended therein, are entitled to be dealt with fairly. The authorities of SSA are constitutionally bound to be transparent, reasonable and non arbitrary in their action vis a vis the petitioners.

10. From the show cause notice, letter dated 27.4.2007 (Annexure-17 to the affidavit of SSA) and the impugned orders dated 18.5.2007 it is more than apparent that the petitioners' services have been terminated on the charge of gross negligence and misappropriation of public funds sanctioned for civil works in the SSA, Dibrugarh. The letter dated 27.4.2007 from the Deputy Commissioner, Dibrugarh to the Mission Director, SSA , in particular reveals that a thorough enquiry had been conducted into the complaints of misappropriation of funds against the petitioners by the authorities referred to therein and that the probe disclosed that the money was demanded and taken by the petitioners and others named therein from the Headmasters/Headmistress of the schools concerned. It further transpires from the said letter that the Headmasters/Headmistress confirmed in writing about the extortion of money from them. The show cause notices issued to the petitioners and others referred to the charge of demand of amounts referred to therein from the Headmasters of the schools concerned as well as the enquiry made by the Deputy Commissioner, Dibrugarh to the said effect. Neither a copy of the enquiry report nor the statements of the Headmasters in writing had been furnished to them for offering their defence. To that extent the vital materials pertaining to the charges levelled were withheld from the petitioners which unmistakably prejudiced them in preparing their defence.

11. It is manifest from the affidavit of SSA that the enquiry reports and the statements of the Headmasters of the schools had formed the basis of the impugned action. This is evident as well from the impugned orders. Having regard to the detrimental consequences visiting the petitioners as a fall out of the impugned orders, I am constrained to hold that in the attending facts and circumstances the same have been in contravention of the principles of natural justice and the fundamental principles of fair play and transparency in administrative action. The termination of the petitioners' services being founded on specific complaints against them, the same ought to have been preceded by reasonable opportunities to them to represent against the same. The omission on the part of the respondent authorities in this regard has generated an all pervasive invalidating effect on the process undertaken and cannot be saved under the cover of clause 6 of the agreement.

12. The plea of alternative remedy of arbitration is also not convincing. The impugned orders are afflicted by a vitiating illegality. The petitioners though in contractual service ,during their term cannot be denied the guarantee of administrative fairness.

13. In Anoop Jaiswal (Supra) , the appellant was discharged from service speciously on the ground of unsuitability for being late in attending the P.T./unarmed combat practice. Explanation was called for from the appellant and others who were probationers. Though he sincerely regretted the lapse ,he denied the charge of instigating others. The Director, National Police Academy, Hyder

abad recommended that he should be discharged from service. The Apex Court on a scrutiny of the contextual facts concluded that late arrival was foundation of the action taken against the appellant and though the order of discharge appeared to be one of discharge simpliciter , the case attracted Article 311(2) of the Constitution of India, the order amounted termination by way of punishment and thus an enquiry ought to have been held in accordance with the said provision.

14. The decision of the Apex Court in Abhijit Gupta (Supra), though pertains to a probationer turns of its own facts, where in the estimation of the Apex Court, the materials acted upon were not stigmatic and the decision against his confirmation was not punitive. Considering the nature of the imputations brought against the petitioners which form the foundation of the impugned orders, this decision is of no avail.

15. In the result, the impugned orders being unsustainable in law are hereby set aside. The petitions are allowed. No costs.